June 2, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

The undersigned state commissioners and legislators respectfully submit these comments in the above-referenced FCC dockets.

A. INTRODUCTION

Reform of the universal service fund (USF) has followed a long and winding road. Federal and state policy makers, along with their industry counterparts, have struggled to affect properly calibrated policies that balance deployment of telephone infrastructure on the one hand and a fair subsidy mechanism on the other. To date, reform efforts have mostly been backwards-looking, focusing on the provision of basic telephone service. While this was a laudable goal twenty years ago, the current world of digital technology requires a more forward-looking approach that acknowledges the shifts in consumer demand for communications technologies and recognizes new trends in convergence and innovation. Policy makers thus find themselves at a critical crossroads; their decisions will have enormous effects on consumers for years to come.

Policy makers are presented with a unique opportunity to boldly transform the USF. Early signs are encouraging. The most recent *Recommended Decisions* by the Federal State Joint Board on Universal Service – regarding an interim cap on the high-cost fund[1] and implementing long-term reforms[2] – have outlined a promising first step in substantially reforming the fund, containing costs, and revising the outdated notions upon which it was originally structured. As the FCC considers these recommendations, and as it reviews the multitude of comments submitted in this proceeding, we the undersigned strongly urge the Commission to take a long-term view and implement market-based policies that will help rein in costs and ultimately reduce the size of the fund while also strategically promoting the organic deployment of advanced communications technologies like broadband and advanced wireless services to the those parts of the country that are truly unserved by the market.

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[1] *High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, Recommended Decision, WC Docket No. 05-337, CC Docket No. 96-45, 22 FCC Rcd 20477 (rel. May 1, 2007) (*Interim Cap Recommended Decision*).

[2] *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 07J-4, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Nov. 20, 2007) (*Recommended Decision*).

This filing is grounded in the basic fact that the communications market has substantially changed – and become increasingly competitive – over the last two decades and continues to evolve at a rapid pace. USF reform must reflect these changes and delineate policies that (i) reflect that the market is working to deliver advanced communications services to the vast majority of consumers, (ii) contain and ultimately reduce the costs of the USF, and (iii) create rational, narrowly tailored market-based economic incentives for the deployment of advanced networks to *unserved* areas. Moreover, this filing articulates a set of foundational principles that the FCC should consider while it contemplates short- and long-term reforms for the USF. These principles include:

- *The USF is premised on antiquated social and economic notions*. The current USF paradigm focuses on the provision and underlying economics of basic telephone service in an era defined by more advanced communications services.
- *The current advanced communications marketplace is robustly competitive*. The advanced communications market is robustly competitive and has spurred innovation and network deployment to nearly every part of the country.
- *Containing costs and reducing the size and scope of the USF are essential to reform*. As advanced services and competition are brought to unserved areas of the country, the USF should diminish in size and scope.
- *Focus on broadband and advanced wireless technologies*. Broadband and advanced wireless technologies are the preferred methods of communication for a large percentage of consumers and USF reform must reflect this shift in demand.
- *Focus on unserved areas and the creation of market-based incentives for network deployment*. A reformed USF must create narrowly tailored economic incentives for the deployment of advanced networks to unserved areas.
- *Formulation of national standards for efficient fund transition*. The articulation and adherence to a set of national standards for fund transition will ensure an efficient and effective move towards a fund structure.
- *Effective state participation*. States possess a set of core competencies that will prove invaluable in implementing a new USF paradigm.

A new USF paradigm would thus work to accurately identify market failures, highlight deployment hurdles, precisely target unserved areas,[3] and efficiently disburse funds to innovative service providers.

[3] In defining "unserved" areas, the Commission should employ a more granular approach that makes a distinction between the availability of broadband and wireless services within an area and the subscription to these services within an area. When considering comprehensive long-term reform, the FCC should work with states and service providers to identify pockets of the country where there is no service but where there is also sufficient demand for those services. Recent action by the FCC to reassess its data collection for broadband is an encouraging first step towards more accurately defining unserved areas. As the FCC has stated, "Improved information about subscribership to the new communications services that are enabled by the widespread availability, and consumer adoption, of end user broadband connections would enable us to better understand how subscriber choice among

Adhering to these guiding principles will ensure continued robust competition in the greater communications market and the deployment of advanced network infrastructure to unserved parts of this country.

B. THE NEED FOR A PARADIGM SHIFT: THE USF IS PREMISED ON ANTIQUATED SOCIAL AND ECONOMIC NOTIONS AND DOES NOT REFLECT THE CURRENT ADVANCED COMMUNICATIONS MARKETPLACE

The way people communicate has fundamentally changed over the last two decades. Gone are the days when a consumer had only one technology and one device for making a phone call. Today, consumers have a growing number of options for staying in touch with family and friends. *Intermodal competition defines this new era as companies are increasingly able to offer voice, data and video services to consumers at lower prices.* As discussed in Section C below, the market is working to deliver new technologies and services to the vast majority of consumers across the country. However, a small percentage of unserved consumers are unable to participate in this technological revolution because they live in remote, rural areas. Yet the framework that was established for providing them with basic telephone service – the original conception of the USF – has proved to be woefully inadequate for helping deliver critical new technologies like broadband and wireless telephony and has been plagued with waste and uncontrolled growth.

Indeed, the very notions upon which the USF was originally conceived still linger. These notions derived from a market dominated by a monopoly that agreed to rigid rate and service regulation. As to the latter, since it is generally more expensive to provide service to sparsely populated rural areas than to denser, urban areas policy makers and regulators devised and imposed a subsidy system on the monopoly provider that guaranteed basic telephone service at affordable rates for rural consumers. At a very elementary level, such subsidies were made possible by having urban and business users pay above cost for their service, thus allowing for a cross-subsidy that drove rural prices down.

In hindsight, the earliest iteration of the USF was a crude way of ensuring universal access to basic telephone service. This framework paralleled consumer use of and demand for communications services, which consisted primarily of basic, wire-based telephony. Even when competition came to the telephone market, regulators continued to impose a similar USF paradigm on providers, which came to be enshrined in the 1996 Telecom Act. However, unlike the implicit cross-subsidies previously used by the telephone monopolist, the modern subsidy system of the 1996 Act was made a bit more explicit in terms of identifying the principal sources of revenue that would eventually fund rural network deployment and subsidize rates.

One of the primary mechanisms employed for accomplishing these goals was the establishment of a high-cost fund that is funded through the "equitable and non-discriminatory

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communications services is affecting the federal universal service fund." *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscription Data, and Development of Data on Interconnected VoIP Subscription*, para. 1, WC Docket No. 07-38 (rel. April 16, 2007) (*FCC Data Collection*).

contributions" of "all providers of telecommunications services."[4] Further, the Act sought to facilitate competition by creating a new class of competitors – eligible telecommunications carriers (ETCs) – that receive USF dollars in exchange for agreeing to service obligations.[5] ETCs include CLECs and wireless carriers. The inclusion of wireless carriers in this scheme was an acknowledgment by policy makers of the growing popularity of the service.[6] *But over the years, as the number of ETCs grew, especially wireless ETCs, the amount of high-cost support required to subsidize competition grew exponentially.* Indeed, between "2001 [and] 2006, competitive ETC support grew from $15 million to almost $1 billion – an annual growth rate of over 100 percent."[7] The primary reason for this was adherence to the so-called identical support rule, which based competitive ETC support on the costs of providing service by the incumbent LEC.[8]

The underlying economic paradigm of the high-cost fund was predicated on antiquated notions of a bygone era. In particular, this paradigm failed to account for the varying economics and costs of using different technologies to provide service.[9] To correct this, the Joint Board recommended,[10] and the FCC recently implemented on an interim basis,[11] a cap on high-cost funding for competitive ETCs in order to "rein in the explosive growth in high-cost universal service support disbursements."[12] We the undersigned applaud the Joint Board and the FCC for taking the necessary steps to cap the fund, which will hopefully set a precedent for more comprehensive long-term cost containment and abatement. Moreover, the Joint Board has also recommended the elimination of the identical support rule.[13] We also support this recommendation and urge the Commission to closely base future fund allocations on the actual costs of new network deployment (to unserved areas) so as to ensure that carriers are not unduly enriched due to a quirk in the USF paradigm.

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[4] 47 U.S.C. 254 (b) (4)

[5] 47 U.S.C. 214 (e)

[6] Indeed, between 1990 and 1996, wireless subscription grew from 5,283,055 in 1990 to 44,042,992 in 1996. This represents an increase of 734 percent. *See* In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Twelfth Report, FCC 07-71, Table A-1 (2008) (*12th CMRS Report*).

[7] *Interim Cap Recommended Decision* at para. 4.

[8] *Id*. at para. 12.

[9] *Id.*

[10] *Id.* at para. 1.

[11] *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, (rel. May 1, 2008) (*Order re Interim Cap*).

[12] *Id.* at para. 1.

[13] *Recommended Decision* at para. 5. The FCC has issued an NPRM regarding the rule. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule NPRM*).

These issues are representative of the problems with the USF, chief among them being a lack of understanding of current business models, shifts in consumer demand, and the deployment of new technologies. The Joint Board and many others who have submitted comments in this proceeding have acknowledged these problems and have rightly concluded that fundamental change is needed. Moreover, the Joint Board and others correctly predicate changes in policy on a shift in focus of the USF, away from basic telephone service and towards the provision of broadband and advanced wireless services to unserved areas.[14] As the next section details, while advanced services have become indispensable for many Americans, the markets is, in fact, delivering such services to the vast majority of consumers.

C. THE RISE OF BROADBAND AND WIRELESS TECHNOLOGIES: CONDITIONS IN THE CURRENT COMMUNICATIONS MARKETPLACE

Effective policy making should track the evolution of the market to which resulting policies will apply. In the case of the USF, the existing paradigm simply does not reflect the current marketplace, either in terms of the competitive nature of the market or consumer preferences for services other than plain old telephone service (POTS).[15] As this section will detail, consumer demand for and use of broadband and wireless technologies has grown rapidly over the past few years. These technologies have supplemented, and increasingly are supplanting, POTS as the preferred method(s) of communication for the average consumer. Consider that the number of traditional telephone lines in service has decreased every year since 2000.[16] Moreover, broadband and wireless technologies provide consumers with profound social and economic benefits, making it even more important that USF reform efforts be targeted at bringing these vital services to and promoting competition in *truly* unserved areas of the country.

1. Supply of, Demand for and Consumer Benefits Associated with Wireless Telephony & Advanced Wireless Services

The meteoric rise in popularity of wireless phones and advanced wireless services is remarkable. Between 1987, when wireless phones started to gain mass appeal, and 2007 the number of wireless subscribers increased from just over 1 million to well over 255 million.[17] The penetration rate is currently around 84 percent[18] and coverage is nationwide. Moreover, consumers are talking on their cell phones more and more. The average number of minutes used

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[14] *Id.* at para. 1.

[15] This point was recently reiterated by FCC Commissioner, and Federal State Joint Board Chair, Deborah Tate. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Statement of Commissioner Deborah Taylor Tate (2008).

[16] In December 2000, the total number of lines in service peaked at 192,432,431. According to the most recent FCC data, that number of as June 2007 was 163,170,381. This represents a net decrease of 15 percent. *See* FCC Report, Local Telephone Competition: as of June 30, 2007, Table 1.

[17] *12th CMRS Report* at Table A-1; CTIA – The Wireless Association, Wireless Quick Facts: Year End Figures, *available at* http://www.ctia.org/advocacy/research/index.cfm/AID/10323 (*Wireless Quick Facts*).

[18] Up from just 13 percent in 1995. *See Wireless Quick Facts, Id.*

per month by consumers has risen fivefold between 1993 and 2006, to just over 700 minutes.[19] By 2003, wireless subscribers were talking on their cell phones more than on their landlines.[20] This cultural shift has been a direct consequence of mobility becoming an integral part of many consumers' lives and the steady decrease in monthly wireless bills.[21]

As consumer demand for wireless telephony increased, so too did demand for more advanced services. In order to accommodate this demand, the FCC made additional spectrum available for digital transmissions in the 1990s. Wireless providers similarly responded to consumers by investing heavily in their networks to make them more robust, more reliable, and more capable of delivering services other than basic voice. To this end, over the past decade wireless carriers have spent much of their time and money developing wireless data packages and applications that are both appealing to and affordable for consumers. The first such service that became immediately popular was text messaging. In 2000, the total number of text messages being sent per month was about 14 million; this number reached 48 *billion* by the end of 2007.[22] Over the last few years, most consumers have become more sophisticated in their wireless habits and have begun to use more mobile data applications in addition to text messaging. These newer applications include photo messaging, Internet browsing, email, GPS mapping, instant messaging, and games.[23] The percentage of wireless subscribers using these types of applications is around 60 percent and continues to increase each year.[24]

In addition to personal communication, mobile applications, and entertainment, mobile phones are also providing key economic and social benefits to many segments of the population. For example, studies have found that using mobile phones enables many economic opportunities, especially for low-income users. Cheaper service, due to steadily falling prices, often makes wireless telephony an attractive and more convenient option for low-income consumers. One recent study in particular has found that mobile phones have a direct impact on job growth, labor productivity, and overall gains in national income.[25] To this end, it has been shown that low-income consumers use phones to find jobs and communicate with an employer. Moreover, wireless phones are inherently mobile, which frees up time and facilitates additional productivity

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[19] *12th CMRS Report* at Table 14.

[20] *See* Keith Mallinson, *Personal Wireless Calling Surpasses Wireline Calling: A Wireless Substitution Update*, Yankee Group Report (Aug. 2005).

[21] *12th CMRS Report* at para. 195, Table 14.

[22] *Wireless Quick Facts*.

[23] *12th CMRS Report* at para. 211.

[24] *Id.* at para. 210.

[25] *See* Nicholas P. Sullivan, *Cell Phones Provide Significant Economic Gains for Low-Income American Households*,8, New Millennium Research Council (April 2008) (*Sullivan Wireless Report*), *available at* http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf.

gains like empowering small businesses, streamlining logistics, and enabling faster decision making.[26]

Studies have also shown that, for many users, the primary appeal of mobile wireless phones is its availability in an emergency.[27] As has been seen over the past few years, wireless phones have played a key role in facilitating emergency communications. Wireless phones have thus become a critical public safety tool. Wireless phones proved invaluable in the aftermath of Hurricane Katrina, helping first responders organize efforts and allowing stranded survivors to contact the authorities. The FCC recently acknowledged the usefulness and increasing indispensability of cell phones when it outlined rules for a Commercial Mobile Alert System (CMAS).[28] While this is a voluntary system, most of the major national wireless carriers have pledged to support it, representing yet another acknowledgement of how critical cell phones are to consumers.[29]

These trends in the wireless market evidence a clear shift in consumer expectations for voice and advanced mobile service. Broadband-enabled mobile phones provide consumers with a set of social, economic, and personal tools that have quickly become necessary and vital in the new global digital economy. While traditional wireline telephony can provide voice service on par with wireless telephony, wire-based phones are immobile and incapable of allowing users to do anything other than dial a number and talk. For the reasons previously discussed in this section, and for those that will be discussed below, mobility and advanced wireless services are essential tools that the market is making available to most consumers. A carefully reformed USF policy has the ability to help ensure access to those remaining consumers who are unserved by the market.

2. Supply of, Demand for and Consumer Benefits Associated with Broadband and Broadband-Enabled Services

Much like wireless, the emergence of broadband Internet access as a preferred mode of communications has been spectacular. Between June 2001 and June 2007 the number of broadband lines in service across the U.S. increased tenfold, rising from about 9 million to over 100 million.[30] Network deployment has been robust in the broadband market, resulting in

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[26] *Id.* at 19-22; *see also* Roger Entner & David Lewin, *The Impact of the U.S. Wireless Telecom Industry on the U.S. Economy*, 19-20 (Sept. 2005) (*Impact of US Wireless*).

[27] *Sullivan Wireless Report* at 14.

[28] *In the Matter of the Commercial Mobile Alert System*, PS Docket No. 07-287, First Report and Order (rel. April 9, 2008).

[29] *See* Chloe Albanesius, *Emergency Alerts Via Cell Phones Move Ahead*, PC MAG., April 10, 2008, *available at* http://www.pcmag.com/article2/0,1759,2282812,00.asp.

[30] *See High-Speed Services for Internet Access: Status as of June 30, 2007*, FCC Wireless Competition Bureau Report, Table 10 (*FCC Broadband Statistics*).

healthy growth across the country. Over the twelve-month period between June 30, 2006 and June 30, 2007, the total number of broadband lines in service increased by 54.5 percent.[31]

The number and type of broadband delivery methods are also increasing and diversifying. Across the United States there are 1,360 different broadband providers that use a number of technologies to bring service to consumers.[32] These include DSL, cable modem, fixed wireless, mobile wireless, fiber-optic, and a variety of other methods. Even though DSL and cable are the most popular choices among consumers, fiber-optic and wireless are being adopted more and more. For example, the number of fiber-optic connections nationwide doubled between 2006 and 2007.[33] Similarly, over 35 million consumers receive broadband via their mobile wireless devices.[34] The diversity of choice available to most Americans is due to the vigorous competition among broadband providers. As such, providers have poured money into their networks in order to provide fast, reliable connections and a multitude of services. Large providers like Verizon and AT&T have invested billions in next-generation fiber-optic networks.[35] In response, the cable industry invested $13.7 billion over the last year to improve and expand their networks.[36] Wireless carriers, too, continue to invest heavily in their networks so they can provide advanced services and broadband-level speeds to consumers.

The emergence of advanced broadband networks has spurred vigorous intermodal competition among many service providers, resulting in increased choice and lower prices for consumers. Along with faster, more reliable access to the Internet, next-generation networks are also being used to deliver voice and video service. New video systems by Verizon and AT&T, for example, have spurred intense competition with cable providers, [37] which has the net effect of lowering prices for consumers. Similarly, cable providers are increasingly offering digital voice service to its customers, packaging it as a "triple play" of services along with video and data. Purchasing a bundle is often cheaper than the total cost of buying each service individually, and this model has stirred competition in the market. Arguably, the loss of traditional wireline telephone customers precipitated the entrance into the video market by incumbent providers like Verizon and AT&T. As a result, consumers have been reaping the fruits of competition.

Consumer use of and demand for broadband is increasing in line with the robust competition and innovation in the marketplace. Statistics regarding the total number of broadband connections across the nation only tell part of the story. Like wireless telephony and

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[31] *Id.*

[32] *Id.* at table 7.

[33] *Id*. at Table 1.

[34] *Id.*

[35] Verizon will invest $23 billion by 2010 in building out its FiOS system. AT&T will invest some $5 billion over the course of the next year to continue the expansion of its fiber-based U-Verse system.

[36] *See Industry Statistics*, NCTA, *available at* http://www.ncta.com/Statistic/Statistic/Statistics.aspx.

[37] *See, e.g.*, Peter Grant and Dionne Searcey, *Verizon's FiOS Challenges Cable's Clout*, Oct. 24, 2007, WALL. ST. JOURNAL.

advanced wireless services, broadband is changing the way people communicate and has changed their use of and expectations for more traditional methods. For example, according to the Pew Internet & American Life Project nearly half of all adult Americans have a broadband connection at home.[38] This represents a five percent increase from 2006 and is nearly double the penetration level of three years earlier.[39] The Consumer Electronics Association recently reported that 75 percent of households that are connected to the Internet rely on broadband.[40] To put this into perspective consider that it took wireless 15 years to reach a 50 percent penetration rate in the U.S.; broadband has taken nine.[41] Yet demand and adoption are not uniform across every demographic. For example, a Consumer Electronics Association report recently found that the number one reason for not subscribing to broadband was the lack of a home computer, not lack of available broadband.[42] Pew reports that this segment of non-broadband users is generally elderly or low-income.[43] Given that broadband is increasingly available, local and state governments and private groups are increasingly focusing their efforts on this group of consumers in an effort to spur demand.[44]

Along with the personal welfare gains that consumers derive from broadband, this technology has had a profound impact on the economic and social wellbeing of individuals, and the nation as a whole. Broadband provides consumers with yet another social outlet. It allows a user to keep in touch with family and friends, take part in online activities, contribute to the democratic process, and participate in a robust digital economy. A spate of reports by the Pew Internet and American Life Project, for example, has found that Internet access has had a profound effect on nearly every age group and has, among many other things, enhanced social interactions and assisted in personal decision making.[45] Moreover, broadband Internet access is being integrated into schools and has fast become a necessary tool for students.

The incorporation of broadband into the lives of all Americans facilitates the country's continued transition towards a more global, interconnected, digital marketplace. This integration

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[38] *See* John Horrigan, *Home Broadband Adoption 2007*, at 1, Pew Internet & American Life Project (June 2007), *available at* http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf.

[39] *Id.*

[40] *See Broadband in America: Access, Use and Outlooks*, Consumer Electronics Association, at 2, July 2007, *available at* http://www.ce.org/PDF/CEA_Broadband_America.pdf (*CEA Broadband Report*).

[41] John Horrigan, *Commentary: U.S. Lags Behind*, at 1, Pew Internet & American Life Project (August 2007), *available at* http://www.pewinternet.org/pdfs/Broadband_Commentary.pdf.

[42] *CEA Broadband Report* at 6. This fact argues for a focused and meaningful definition of "unserved" for purposes of USF reform – a definition that focuses on a true lack of broadband (or wireless infrastructure) and not on broader notions of whether one subscribes to broadband.

[43] *See* John Horrigan, *A Typology of Information and Communication Technology Users*, at 27-33, Pew Internet & American Life Project (May 2007), *available at* http://www.pewinternet.org/pdfs/PIP_ICT_Typology.pdf.

[44] *Please see infra* for further discussion.

[45] *See* John Horrigan and Lee Rainie, *The Internet's Growing Role in Life's Major Moments*, Pew Internet & American Life Project (April 2006), *available at* http://www.pewinternet.org/pdfs/PIP_Major%20Moments_2006.pdf.

has had and will continue to have a measurable impact on our economy. It has been shown that "broadband access does enhance economic growth and performance."[46] Broadband has overall positives impacts on economic growth, job creation, and increasing business opportunities.[47] A recent study estimated that continued deployment and adoption of broadband throughout the U.S. would have the following consequences: "$92 billion through an additional 2.4 million jobs per year created or retained" and "$134 billion per year in total direct economic impact for the United States."[48]

A recent report by the federal government's National Telecommunications and Information Administration (NTIA) summed up the impact of broadband perfectly when it stated: "The capacity to manage large amounts of information (whether voice/audio, data, or video) and to quickly and efficiently exchange it with others down the street or across the globe is no longer a luxury but, like the telephone over a century ago, is quickly becoming an essential tool for life and commerce in the modern world."[49] Broadband provides users with access to an ever-expanding universe of information, services, and applications. Reliable broadband Internet access increases productivity, strengthens relationships, and produces innumerable consumer welfare gains. Along with wireless telephony and advanced wireless services, these technologies are critical new tools that must be deployed to those who are currently not served by the market.

Two key conclusions can be drawn from the discussion above. *First, the market is working to bring broadband and advanced wireless technologies to the vast majority of consumers across the country. Second, USF reform should focus on creating narrowly tailored economic incentives to spur the deployment of advanced networks to truly unserved parts of the country.* The Commission should consider these conclusions and the following set of guiding principles when developing USF reforms.

D. GUIDING PRINCIPLES FOR EFFECTIVE USF REFORM

As the FCC considers comprehensive long-term reform for the USF, the Commission would be wise to craft policies that are economically sound and reflective of conditions in the current communications marketplace. Past failures at reforming the USF have stemmed from a seeming stubbornness to adhere to outdated and antiquated economic and social notions and from a fundamental misunderstanding of evolving business models. Going forward, a focus on

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[46] *See* Sharon E. Gillet et al., *Measuring Broadband's Economic Impact*, at 3, a Report Prepared for the U.S. Department of Commerce, Economic Development Administration (Feb. 2006).

[47] *Id.* at 4-5.

[48] *See The Economic Impact of Stimulating Broadband Nationally*, at 20, a report by Connected Nation (Feb. 2008) (*Connected Nation Report*), *available at* http://www.connectednation.com/documents/NewForPrint_2008_02_21_TheEconomicImpactofStimulatingBroadbandNationally_AConnectedNationRep.pdf.

[49] *See Network Nation: Broadband in America 2007*, at 37, a report of the National Telecommunications and Information Administration (Jan. 2008), *available at* http://www.ntia.doc.gov/reports/2008/NetworkedNationBroadbandinAmerica2007.pdf.

market failures and fiscal responsibility should be dispositive when affecting regulatory reform. More specifically, the Commission should implement policies that will encourage the deployment of broadband and advanced wireless technologies to unserved areas of the country in a rational and principled way. Moreover, current policies must be updated to provide incentives for continued network development and deployment in order to promote competition in these unserved areas. There has been some success to date in bringing advanced services to unserved areas, but more can and should be done.

The Joint Board, in its most recent *Recommended Decision*, has set out a basic framework for long-term reform. It is a good start, and the Joint Board should be commended for putting broadband and wireless technologies at the center of its proposals. The Joint Board should also be commended for outlining a set of principles upon which comprehensive reform will be based. These principles include cost control, accountability, state participation, and infrastructure build-out in unserved areas.[50] However, as the FCC considers the *Recommended Decision* and weighs the numerous comments filed in this docket, we respectfully suggest that policy would be well-informed by the guiding principles enumerated below. These reflect our varied and deep experiences with constituents in our states and our general observations regarding the effect of regulation on the communications market. Adhering to the following core principles will help ensure effective USF reform.

1. Cost Control

It is axiomatic that both short-term and comprehensive long-term USF reform must include strict cost controls. Indeed this was the driving force behind the Commission's latest action to adopt the Joint Board's recommendation for an interim cap on the high-cost fund.[51] Going forward, the Commission must act to stabilize the fund while also ensuring that new initiatives focused on broadband and wireless build-out to unserved areas are sufficiently financed. As the Joint Board noted in its *Recommended Decision*, such reforms must carefully balance the benefits that will flow from increased funding against any added financial burdens on consumers.[52] Further, the Joint Board noted that unrestrained growth will likely be catastrophic to the USF.[53] Thus a carefully calibrated transition to the new funding structure will be necessary in order to avoid the bloating that has riddled the current fund.

The Joint Board has recommended that, in addition to a cap on the high-cost fund, existing funds under the cap would be used to support the Mobility Fund (in the amount of $1 billion).[54] In addition, the Board recommends raising an additional $300 million for the new

[50] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, dated Sept. 6, 2007.

[51] *Order re Interim Cap* at para. 5.

[52] *Recommended Decision* at para. 24.

[53] *Id.* at para. 25.

[54] *Id.* at para. 28.

Broadband fund.[55] The Joint Board does not specify the sources of money for the new Broadband fund but it does provide a number of suggestions.[56] Eventually, all of the new funds will be supported by a USF that is capped at $4.5 billion.[57] These proposals demonstrate a desire to rein in the USF and to impose strict cost controls, but the Commission should do whatever is within its authority to ensure that the fund does not grow and again become unsustainable. Recent action to cap the high-cost fund should set a precedent for more comprehensive long-term reform. As has been seen over the past few years, increasing the size of the fund is uneconomic, ineffective, unnecessary, and would ultimately produce consumer welfare losses.

The primary long-term concern will be to ensure that the fund ultimately diminishes in size as competition is brought to more unserved areas. To this end, the Commission must craft a strategy that includes adequate mechanisms that are responsive to competition. As broadband and wireless services are brought to unserved areas, consumers will benefit from real intermodal competition. As such, USF policy ought to narrow in scope and focus. The USF, in theory, assists in correcting for market failures. Where supply falls short of demand, the USF will provide incentives and funding to bring service to these consumers. Thus, as the number of unserved consumers and areas decreases so, too, should the scope and size of the USF.

2. Focus on Broadband and Advanced Wireless Technologies

As discussed above, broadband and advanced wireless technologies are increasingly important to consumers. Demand for and use of each technology continues to increase rapidly. The Joint Board correctly observed that "the nation's communications goals include achieving universal availability of mobility services (defined as wireless voice), universal availability of broadband Internet services, and voice services at affordable and comparable rates for all rural and non-rural areas."[58] Thus, helping fund broadband and wireless networks for unserved areas with existing USF dollars will encourage the deployment of advanced communications networks that are most valuable to consumers. Transitioning funds from POTS to next generation networks in unserved areas is a necessary first step towards achieving meaningful universal service reform.

Comprehensive USF reform that focuses on market-based solutions and that creates incentives for organic broadband and wireless network deployment – *where the market is failing to serve* – could also set a precedent for additional policies that will ensure that the United States continues to lead the world in the development and adoption of advanced technologies. To date, discussions regarding the current communications market and the transition towards a more global economy have fixated on ancillary issues that have not effectively advanced the conversation. These ancillary and distracting issues have included the efficacy of adopting a national broadband plan, implementing a rigid definition for broadband via speed benchmarks,

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[55] *Id.* at para. 29.

[56] *Id.*

[57] *Id.* at para. 32.

[58] *Recommended Decision* at para. 4.

and the imposition of network regulations like network neutrality rules or network management protocols. But, as has been seen, competition in the communications marketplace has produced a vibrant information economy and widespread consumer welfare gains, thus nullifying many of these criticisms. Creating a system that promotes and facilitates this type of competition among broadband and wireless providers *in unserved parts* will promote universal access to these essential services without unnecessary regulation that could slow deployment and chill innovation.

3. Focus on Unserved Areas and the Creation of Market-Based Incentives for Network Deployment

The availability of broadband and wireless services is widespread across the U.S. According to the FCC, broadband is available in 99 percent of all zip codes.[59] Moreover, nearly 90 percent of residents live in areas with four or more broadband providers.[60] Similarly, over 95 percent of the U.S. population lives in areas with three or more different wireless providers and almost 90 percent live in areas with four or more providers.[61] Organic, market-driven competition has pushed networks to nearly every corner of the country, yet there remain certain areas that are unserved by a broadband and/or wireless provider. The current USF, with many billions of dollars to dole out, has been unable to spur build-out to these areas. Meaningful reform is critical.

The primary reason for the market and regulatory failure has been the lack of economic incentive for a service provider to extend its network. As was discussed above, the high-cost fund that was supposed to drive network expansion to even the most remote parts of the country has bloated and failed, leaving certain areas of the country unserved. Comprehensive USF reform, then, must outline a system of market-based incentives for spurring network build-out that (i) draws on existing funding levels and that (ii) contains and ultimately diminishes the size of the USF.

Policy-based economic incentives for broadband and advanced wireless network build-out should be targeted and project-based. Funding should be forward-looking and allotted in a way that encourages innovation and the development of unique business models designed to bring advanced services to consumers. Funding should also be provided only to those projects that will deploy networks to unserved areas. Moreover, disbursement mechanisms should reward providers that are willing to bring more robust service to unserved areas. In other words, an ambitious business plan that is economically sound should be selected over a more generic, one-size-fits-all proposal. Distinguishing characteristics among projects might include the bandwidth that will be delivered, the size of the unserved area that will be served,[62] the length of time a

[59] *FCC Broadband Statistics* at Table 10.

[60] *Id.* at Chart 12.

[61] *12th CMRS Report* at p. 5.

[62] *Please see infra* for a discussion on the process for identifying and validating unserved areas.

provider commits to a certain area, and how quickly it promises to deliver service. Recipients should receive only a one-time allotment (as opposed to ongoing disbursements) that would assist in network build-out and deployment of advanced services. The short-term goal is to bring service to unserved areas in an economically rational way; the long-term goal is to foster competition among providers in these areas.[63] Competition would eventually create a marketplace that organically produces incentives to reinvest in networks and innovate, which would allow for the USF shrink in size and scope over time.

4. Formulation of National Standards for Efficient Fund Transition

Comprehensive long-term USF reform requires the development of national standards to ease transition of the fund towards a new structure. National standards should be crafted to protect against the development of duplicative but potentially differing state-by-state implementation regimes that would slow deployment to unserved areas and raise the possibility of the fund reverting back to its current state of inertia. A set of national standards would also assure that similarly situated states are treated similarly and that each state receives its fair share of funding.

Key areas where national standards will be useful are in identifying unserved areas and in selecting project proposals for funding. In terms of standards used in the identification of unserved areas, the Commission should outline a uniform method for collecting data regarding service availability and mapping the results.[64] Using maps to pinpoint unserved areas has become essential in ensuring the efficient and precise build-out of networks.[65] Adopting a set of national standards for mapping would assure a minimum level of specificity in targeting unserved areas.

Moreover, the development of national standards for the selection of projects for funding would similarly ensure robust deployment efforts. Selection criteria should be merits-based and should reward innovation and ambition on the part of the service provider. Funding should be allocated to those providers that evince a true commitment to providing robust service to unserved areas and that have a viable, sustainable business model that does not depend on long-

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[63] Comprehensive USF reform should also consider reforming carrier of last resort (COLR) regimes. The Joint Board acknowledges that change is needed but stops short of recommending specific reforms. Currently, the USF provides price cap incumbent providers with funding to provide basic telephone service but *there are no incentives to provide broadband service*. Even though COLR regimes are implemented at the state level, the USF could be reformed to encourage deregulation in the states, which would free existing COLRs of a variety of service and price obligations and allow them to better deploy advanced networks. Such reforms would spur competition in unserved areas by providing consumers with a number of choices for voice and data services. *Recommended Decision* at para. 19.

[64] The Commission has opened a rulemaking proceeding on this issue. *See FCC Data Collection, supra.*

[65] Many states and public-private organizations like Connected Nation use these types of maps. *See, e.g., Connected Nation Report; The State of Connectivity: Building Innovation through Broadband*, at 21, Final Report of the California Broadband Task Force (Jan. 2008) (*California Broadband Report*), *available at* http://www.calink.ca.gov/pdf/CBTF_FINAL_Report.pdf.

term USF support to subsidize it. Such criteria will likely spur competition for funding to deploy networks in unserved areas.

The adoption of such rules will be a key to the success of USF reforms and could set an important precedent for further policy making in a number of areas. As has been seen in other segments of the communications market, a patchwork of varying state-level regulations has often led to consumer welfare losses. For example, before the adoption of a national regulatory framework in the early 1990s for wireless, varying state-level rules and regulations that raised the cost of doing business in a state eventually trickled down to the consumer, increasing prices for subscribers across the country. However, after the implementation of a national regulatory framework, the wireless market thrived. Networks became more robust, demand surged and prices decreased.

As USF reform will likely focus on broadband and advanced wireless technologies, the articulation of national standards and a truly national regulatory framework for these technologies is important. Although such is beyond the scope of the current proceeding, policymakers and regulators must evaluate the costs and benefits associated with the implementation of national frameworks for broadband and advanced wireless services. Networks that are national, and increasingly international, in nature require a firm set of rules that represent both a floor and a ceiling in order to assure continued network deployment. While states should be given ample authority to contribute to the development of these standards and may have certain enforcement functions, potentially divergent substantive rules relating to broadband and wireless would hinder deployment and would raise transaction costs for all consumers. The implementation of national standards for broadband and advanced wireless technologies will further meaningful USF reform, speed transition towards a new framework, and assure continued consumer welfare gains.

5. Effective State Participation

The participation of states in the implementation of USF reform and in the future administration of funding will be crucial to the success of network deployment to unserved areas. States could play a key role in the selection of meritorious proposals for funding and overseeing the efforts of the winning companies to ensure that they meet the criteria set for in the proposals. Moreover, states should be encouraged to create their own market-based approaches to encourage the deployment of broadband and wireless services to unserved areas within their territory. States would then be able to supplement existing projects or select additional projects beyond those that are federally-funded. In addition, states should be provided with incentives to undertake meaningful deregulation that would free service providers from onerous rate and service obligations.

Most importantly, however, states will be in a position to identify and find solutions for those areas that are beyond the scope of the federal USF. There may be areas that are so uneconomic to serve that even federal USF incentives might not be enough to secure effective deployment. In these cases, states would be encouraged to forge public-private partnerships with

organizations like Connected Nation to identify economically-feasible solutions for bridging the divide.[66] A number of states have also created similar public-private broadband programs that seek to bring broadband to all parts of the state.[67]

States are also uniquely positioned to spur demand for broadband. A key component of the Connected Nation model, for example, is a community-driven approach to educating consumers on the uses of broadband and assessing real levels of demand for it.[68] As the uses and value of broadband become more widely accepted, and as states continue to focus on network deployment to unserved areas, a number of innovative approaches to spurring demand have arisen in a number of contexts. For example, an organization called One Economy focuses on spurring demand among low-income users and encouraging deployment within low-income housing. Wireless Philadelphia used a similar approach when it was investigating the feasibility of a citywide Wi-Fi solution.

Although finding a proper state-federal balance in regards to telecommunications policy has been difficult at times, there is no question that states possess a critical set of core competencies that will prove invaluable in the deployment of advanced networks to unserved areas.

E. CONCLUSION

The FCC has a unique opportunity to fundamentally reform the universal service fund. Unlike at other points in the past, both the Joint Board and the Commission agree that comprehensive reform is needed. Moreover, most stakeholders – policy makers and regulators at every level of government, along with consumers and service providers – agree that reform must center on bringing broadband and advanced wireless technologies to unserved areas of the country while concomitantly containing costs. As this filing has made clear, effective USF reform that adheres to the core principles enumerated above will spur the deployment of advanced services to unserved areas and ensure that those currently not served by the market enjoy the fruits of robust intermodal competition. It is for these reasons that we the undersigned respectfully call on the FCC to adhere to the set of guiding principles articulated in this filing when considering comprehensive long-term reform of the USF.

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[66] The Connected Nation model, described *infra*, has been implemented in Kentucky, Tennessee, Ohio and West Virginia. *See* Connected Nation – State Programs, *available at* http://www.connectednation.com/state_programs/.

[67] Examples include the California Broadband Task Force, the ConnectME program in Maine and the Vermont Broadband Council.

[68] *Connected Nation Report* at 14 (the [Connected Nation] model is rooted in a community-driven technology planning process that creates demand for broadband and information technology services, which in turn drives the investment that extends the supply of those services. The point of contact between supply and demand is within communities themselves. The [Connected Nation] model attempts to foster a sustainable, grassroots coalition of community leaders representing education, healthcare, businesses, government, libraries, agriculture, tourism and community-based organizations.").

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Respectfully submitted,[*]

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[*] The comments herein represent, collectively, those of the individual signatories to the comments and do not necessarily represent the positions of either the public utility commissions on which the signatories serve or the state legislatures in which the signatories serve.